



State of New Jersey

Department of Environmental Protection

James E. McGreevey
Governor

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cc: Paulon
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Bellow
Bradley M. Campbell
Commissioner

October 10, 2003

Copy: Eric Schauf
Original to
Ray Basso
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By Facsimile and Regular U.S. Mail

Honorable Jane M. Kenny, Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Colonel John B. O'Dowd
U.S. Army District Engineer
United States Army Corps of Engineers
New York District
26 Federal Plaza
New York, New York 10278-0090

U.S. EPA REGION II
ENR & REGISTRATION
2003 OCT 21 PM 4:55
DIRECTOR'S OFFICE

Re: Lower Passaic River Project - Draft MOA

Dear Ms. Kenny and Colonel O'Dowd:

The New Jersey Departments of Environmental Protection and Transportation have reviewed the draft Memorandum of Agreement (MOA) concerning the governmental partnership for the remediation and restoration of the Lower Passaic River and provide the following comments for inclusion in the MOA.

MOA - General Comments

1. The MOA is currently drafted to include the United State Army Corps of Engineers (USACOE), the United State Environmental Protection Agency (USEPA), New Jersey Department of Transportation - Office of Maritime Resources (NJOMR) and the New Jersey Department of Environmental Protection (NJDEP or the Department). NJDEP is included in this MOA due to its responsibilities to oversee remediation. However, the Department is also a Trustee for Natural Resources and will accordingly assert its authority as Trustee.

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US EPA

2. The MOA will result in a comprehensive Lower Passaic River Remediation and Restoration Plan that recognizes the historic contributions of industries along the Passaic River. Additional industrial contributors that represent continuing sources of contamination to the Lower Passaic will be identified. If this study identifies new sites, the Department can not commit to making any newly identified sites priorities; they will be placed on the Department's known contaminated sites list and assigned accordingly. Additionally, The Department may not be in a position to make currently active sites source priorities. This MOA does not provide any additional resources for oversight work for these sites, although NJDEP will continue to utilize the existing USEPA grant for this project for reimbursement of costs. The Department would like to explore alternatives that would increase the available resources for this project.

3. The MOA should be expanded to include the Passaic Valley Sewerage Commission (PVSC) as an additional local sponsor.

MOA - Specific Comments

1. The MOA currently contains language describing the involvement of each agency: USACOE, USEPA, NJOMR. The following language should be incorporated into the Ongoing Agency Involvement section of the MOA to describe NJDEP's involvement:

NJDEP

The Site Remediation and Waste Management Program (SRWMP) conducts, oversees, and/or coordinates various remedial response actions along the 17 mile section of the lower Passaic River. These are conducted pursuant to various statutes including, but not limited to, the New Jersey Spill Compensation and Control Act, the Brownfields and Contaminated Site Remediation Act, the New Jersey Clean Water Act, New Jersey Water Pollution Control Act and the Technical Requirements for Site Remediation. Remediation may also be coordinated through RCRA Corrective Actions.

Waterfront Development Permits, Water Quality Certifications, Fresh Water Wetland Permits, and Stream Encroachment Permits are issued pursuant to various state regulations.

Landfill operations and closure permits are issued for various landfills within the adjacent areas to the river, pursuant to the New Jersey Solid Waste Management Act.

The Office of Natural Resource Restoration conducts, oversees, or coordinates assessment and restoration of New Jersey's natural resources that have been injured by uncontrolled releases of oil or other hazardous substances. This is conducted pursuant to the New Jersey Spill Compensation and Control Act and the New Jersey Water Pollution Control Act, in addition to relevant federal statutes.

NJDEP also has the fiduciary responsibility to assess and restore injuries to the State's natural resources and will ensure that the CERCLA and WRDA processes operating during the Passaic River project do so in an efficient manner.

2. Additionally, the role of the Department under Upcoming Agency Involvement at the Lower Passaic River (page 4) must be revised to reflect that the Site Remediation Program will provide technical assistance by reviewing work plans and reports, coordinating the remediation projects in the Passaic River basin, and assuring compliance with ARARs as required by CERCLA. The specific language here should be deleted and the following language be added:

The Department will continue to:

1. Oversee remedial response activities.
2. Participate in any dredging operations.
3. Continue to oversee operation and closure of landfills.

3. The MOA is silent on the review time afforded to NJDEP and whether its concurrence is required as is the case with other federal lead Superfund sites. NJDEP suggests that review times be laid out in the MOA (e.g. 60-day goal for agency review of deliverables under any contracts) with the understanding that all agencies will expeditiously review deliverables wherever possible. The Department also suggests that the MOA include appropriate measures to provide for State concurrence with all documents and decisions.

4. Milestones should be included for sediment characterization, source identification and remedial alternatives analyses. These milestones should be established in an aggressive schedule that will allow this site to be remediated as soon as possible.

5. The MOA states that the signatories intend to keep certain information shared under the MOA confidential. The MOA should include language that the signatories will keep information confidential to the extent permitted under federal and state law (federal Freedom of Information Act and New Jersey's Open Public Records Act and relevant case law). The Department will work with the Parties to develop a Joint Prosecution and Confidentiality Agreement that extends appropriate confidentiality to information, consistent with federal and state law.

6. In the Authorities section of the MOA, the following language should be added to the end of the paragraph:

The parties acknowledge that nothing in this MOA shall be interpreted to preclude or restrict the right of the State of New Jersey to pursue any claim against a responsible party for Natural Resource Damages, including restoration. The parties further acknowledge that the State of New Jersey is acting under its own authority to compel restoration actions commensurate with the injuries to natural resources under the Trusteeship of the State of New Jersey.

Should the Parties have any questions concerning the above comments, please contact Assistant Commissioner Evan VanHook at (609)292-1250. The remediation and restoration of

the Lower Passaic River are important environmental goals of Governor James E. McGreevey. When achieved, it will represent a significant achievement of State and national importance. I look forward to working with the other governmental Partners to make this goal a reality.

Very truly yours,



Jack Lettiere, Jr.
Commissioner
New Jersey Department of Transportation



Bradley M. Campbell
Commissioner
New Jersey Department of Environmental
Protection

c: Richard Gimello, Executive Director, NJDOT-OMR
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